

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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In re	:	
	:	
NORTHWESTERN CORPORATION,	:	
	:	
Debtor.	:	
-----	x	
LAZARD FRÈRES & CO. LLC	:	
	:	
Appellant,	:	
	:	Civil Action No. 05-395 (JJF)
v.	:	
	:	Bankruptcy Case 03-12872 (JLP)
NORTHWESTERN CORPORATION,	:	
	:	
Appellee.	:	
-----	x	

**APPELLANT LAZARD FRÈRES & CO. LLC'S  
OPENING BRIEF ON APPEAL**

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### NATURE AND STAGE OF PROCEEDING

On May 5, 2005, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") issued its memorandum opinion and order on the final fee application of appellant Lazard Frères & Co. LLC ("Lazard"), as financial advisor and investment banker to NorthWestern Corporation ("NorthWestern" or the "Debtor") which, *inter alia*, awarded Lazard only half of a \$5.5 million "Restructuring Fee" provided for in a letter agreement (the "Engagement Letter") between the Debtor and Lazard which set forth the terms of Lazard's retention and was approved by the court below at the beginning of the Debtor's bankruptcy case. *In re Northwestern Corp.*, 324 B.R. 538, 539, 547-48 (Bankr. D. Del. 2005) (the "Opinion").<sup>1</sup> Lazard filed its notice of appeal from this decision in the Bankruptcy Court on May 10, 2005 (D.I. No. 1),<sup>2</sup> and filed its Statement Of Issues On Appeal And Designation Of Items To Be Included In The Record in this Court on June 15, 2005. (D.I. No. 2)<sup>3</sup> On June 29, 2005, this Court appointed a mediator for the matter (D.I. No. 4), but because no other party in interest opposes the appeal, it could not be resolved by mediation. Therefore, on December 20, 2005, the Court entered an order setting the briefing schedule on appeal. (D.I. No. 7) This is Lazard's opening brief in support of its appeal.

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<sup>1</sup> The Bankruptcy Court also awarded Lazard "hourly" fees of \$2,892,060.00 and expenses of \$97,701.62. Opinion, 324 B.R. at 547-48. Lazard has not appealed that aspect of the decision below; rather, this appeal relates solely to the Restructuring Fee award.

<sup>2</sup> The docket numbers of items filed in this Court are noted as "D.I. No. \_\_\_\_."

<sup>3</sup> Copies of the documents designated for the record on appeal were tabbed (nos. 1 through 61) and provided to the Court and are cited herein as "Tab No. \_\_\_\_ at \_\_\_\_."

### **SUMMARY OF ARGUMENT**

1. The Bankruptcy Court erred in (i) holding that Lazard's request for approval of the Restructuring Fee in the amount provided in its Engagement Letter with the Debtor did not meet the criteria in 11 U.S.C. § 330(a)(3), and (ii) reducing the Restructuring Fee by half, where no party in interest objected to Lazard's final fee application, including the request for approval of the full Restructuring Fee.

## STATEMENT OF FACTS

On September 14, 2003, NorthWestern, a public utility in the Upper Midwest and Northwest, filed a petition under chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*,<sup>4</sup> in the Bankruptcy Court. (Tab No. 1 at 2, ¶¶ 2, 4)

On September 17, 2003, the Debtor applied to retain Lazard as its financial advisor in accordance with the terms of the Engagement Letter submitted with the application. (Tab No. 1, Exhibit C) Lazard's compensation under the Engagement Letter was \$200,000 per month plus expenses and a \$5.5 million "Restructuring Fee" upon "the earlier of execution of definitive agreements with respect to a Restructuring and delivery of binding consents to such plan by a sufficient number of creditors and/or bondholders, as the case may be, to bind the creditors or bondholders, as the case may be to the Restructuring." (*Id.* at 3) Lazard's entitlement to the Restructuring Fee was not conditioned on achieving a recovery for the equity holders. No one filed an objection to Lazard's retention or the terms of the Engagement Letter. On October 10, 2003, the Bankruptcy Court, Bankruptcy Judge Charles Case presiding, granted the Debtor's application and approved the Engagement Letter, including the \$5.5 million Restructuring Fee, subject to final review under sections 328 and 330. (Tab No. 2)

On August 18, 2004, the Debtor filed its proposed second amended and restated reorganization plan (the "Plan") (Tab No. 31) and disclosure statement. (Tab No. 32) On October 19, 2004, the Bankruptcy Court confirmed the Plan, which became effective November 1, 2004. (Tab No. 45)

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<sup>4</sup> All section citations herein are to the Bankruptcy Code.

Since the conditions in the Engagement Letter had been satisfied, on December 1, 2004, Lazard applied for final approval of the full Restructuring Fee. (Tab No. 50) On January 11, 2005, the court-appointed fee auditor filed its report recommending that the full \$5.5 million Restructuring Fee be approved under sections 328 and 330. (Tab No. 55) Lazard also submitted uncontested evidence of the fees charged in other comparable restructuring and non-bankruptcy change-of-control transactions; this document, Exhibit 1 admitted into evidence at the hearing on Lazard's final fee application (*see* Tab No. 58 at 14-17, 31), which also was attached to the fee auditor's report (Tab No. 55 at 25-29), is attached hereto for ease of reference. No party in interest – none of the common equity holders, preferred equity holders, the Unsecured Creditors' Committee, the United States Trustee, or the Debtor – objected to Lazard's final fee application. *See* Opinion, 324 B.R. at 539.

On May 5, 2005, the Bankruptcy Court – Bankruptcy Judge John L. Peterson presiding this time – issued a decision that *sua sponte* cut Lazard's previously approved Restructuring Fee in half, to \$2.75 million, and found that Lazard's uncontested evidence did not meet the criteria of section 330(a)(3)(E).<sup>5</sup> *See* Opinion, 324 B.R. at 547-48.

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<sup>5</sup> Section 330(a)(3) now provides:

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including —

- (A) the time spent on such services;
- (B) the rates charged for such services;

Continued...



## ARGUMENT

### I. STANDARD OF REVIEW ON APPEAL

On appeal, the Bankruptcy Court's conclusions of law – *i.e.*, its interpretation of section 330(a)(3) – are subject to *de novo* review. *Schlumberger Res. Mgmt. Servs., Inc. v. Cellnet Data Sys., Inc. (In re Cellnet Data Sys., Inc.)*, 327 F.3d 242, 244 (3d Cir. 2003). The Bankruptcy Court's findings of fact are reviewed for clear error, *i.e.*, "when 'the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Id.* (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)); *see also Houlihan, Lokey, Howard & Zukin Capital, Inc. v. NorthWestern Corp. (In re NorthWestern Corp.)*, 332 B.R. 534 (D. Del. 2005). Applying these standards here, the Bankruptcy Court's decision to cut Lazard's Restructuring Fee in half should be reversed.

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(continued)

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Because the statute has since been amended to add a new subsection, what is now subsection (F) was subsection (E) at the time of the decision below.

**II. THE BANKRUPTCY COURT ERRED IN NOT APPROVING THE FULL RESTRUCTURING FEE TO LAZARD PURSUANT TO THE TERMS OF THE ENGAGEMENT LETTER.**

Courts reviewing professional compensation under section 330(a)(3) consider the nature, extent and value of the services, taking into account the time spent, the rates charged, whether the services were necessary or beneficial, whether the services were performed within a reasonable time commensurate with the complexity of the issues, and whether the compensation is reasonable compared with customary compensation charged in non-bankruptcy cases.

When assessing "success" or "restructuring" fees under section 330(a), the market rate and value of the bankruptcy professional's services generally determine what is reasonable. "When we examine 'success fees,' some of [the factors listed in section 330(a)(3)] drop away, such as the 'time spent' or the 'rates charged.' That the services might have been beneficial or necessary is of course highly relevant, however, as is whether the compensation approximates the practice outside bankruptcy." *In re Intellogic Trace, Inc.*, 188 B.R. 557, 559 (Bankr. W.D. Tex. 1995).

As discussed below, Lazard is entitled to the full \$5.5 million Restructuring Fee. Under section 330(a)(3), that fee is reasonable in light of the market rates for comparable financial advisory and investment banking services and the value of the services provided by Lazard to the Debtor and its estate.

**A. Lazard's Restructuring Fee Was Reasonable Compared To Rates Charged For Comparable Financial Advisory Services.**

The "cost of comparable services factor has an overarching role to act as a guide to the value of the services rendered . . . ." *In re Busy Beaver Bldg. Ctrs.*, 19 F.3d 833, 849 (3d Cir. 1994). Thus, section 330(a)(3) mandates a market analysis: "[i]f the

marketplace naturally establishes a price for a service, then we believe that it is logical to assume that this is the [proper] figure." *In re Patronek*, 121 B.R. 728, 731 (Bankr. E.D. Pa. 1990).

Section 330(a)(3) sets an objective, not subjective, review standard for professional responsibilities and fees. The Third Circuit Court of Appeals expressly "disapprove[s] of any approach that allows a court confronted with undisputed, credible, contrary evidence of market practices in the record to rely solely on its own judgment" when reviewing a fee application. *In re Busy Beaver*, 19 F.3d at 848. When courts set "arbitrary guidelines [they] risk being so far out of step with the marketplace that they skew the process, driving away competent professionals." *In re Intellogic Trace*, 188 B.R. at 560 n.3. Accordingly, competent evidence with respect to the market value of a professional's fees must prevail over any subjective judgment.

The *only* evidence in the record before the Bankruptcy Court established that the full \$5.5 million Restructuring Fee is reasonable compared with the market for similar financial advisory and investment banking services. The Debtor's enterprise value and funded debt were about \$1.5 billion and \$2.2 billion, respectively. *See Opinion*, 324 B.R. at 543 (funded debt) and 545 (enterprise value). Exhibit 1 summarizes the fees charged by financial advisors representing debtors of similar size (funded debt of \$1.6 billion to \$2.4 billion) in a dozen recent restructuring transactions, both in and out of court. The average restructuring/success fee charged in those transactions was \$6.2 million, or 0.32% of funded debt. The \$5.5 million Restructuring Fee here was lower – only 0.25% of the Debtor's funded debt.

The Bankruptcy Court concluded, without support, that "the majority, if not all, of the cases relied upon by Lazard are fees assessed in bankruptcy, not non-bankruptcy cases, [which] therefore do not meet the criteria of section 330(a)(3)(E)."<sup>6</sup> Opinion, 324 B.R. at 547. To the contrary, Lazard provided uncontested evidence of financial advisor fees paid by sellers in 65 recent non-bankruptcy change-of-control transactions in the \$1.0 billion to \$2.0 billion range. (*See* Exhibit 1) There, the average fee of \$8.0 million was 0.6% of the total enterprise value ("TEV"), while here, the \$5.5 million Restructuring Fee was only 0.37% of the Debtor's enterprise value.

The Bankruptcy Court rejected reliance on the non-bankruptcy comparable transactions proffered by Lazard because the Debtor's "case did not involve a sale transaction." Opinion, 324 B.R. at 543. This was erroneous. While Lazard did assist the Debtor in assessing third party acquisition proposals, the Debtor, Lazard, the Unsecured Creditors' Committee and the stakeholders agreed that the standalone Plan would provide greater value for the estate. (*See* Tab No. 32 at 48-49) That Plan was a debt-for-equity exchange in which the former stockholders' equity interests were extinguished, and the equity in the reorganized entity, in effect, was "sold" to a group of new owners, *i.e.*, the former creditors, for the market value of their claims against the Debtor. (*See generally* Tab Nos. 31, 32) The economic reality is that the Plan was a change-of-control transaction just as much as the non-bankruptcy sales cited by Lazard

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<sup>6</sup> The Bankruptcy Court also stated that this was "conceded at the hearing" on Lazard's final fee application. Opinion, 324 B.R. at 547. That is wrong. No such concession was made, and none is reflected in the February 10 and April 5, 2005 hearing transcripts. (Tab Nos. 56, 58)

and, in fact, was better than the third party offers that were rejected by the stakeholders in the Debtor's case.<sup>7</sup>

In sum, all of the record evidence shows that the \$5.5 million Restructuring Fee sought by Lazard compared favorably to market rates for financial advisors in comparable restructuring and non-bankruptcy change-of-control transactions. No contrary evidence was offered or cited by the Bankruptcy Court. Therefore, as section 330(a)(3) provides, the requested Restructuring Fee "is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than [bankruptcy] cases" and should have been approved.

**B. The Restructuring Fee Was Reasonable In Relation To The Benefits Lazard Provided To The Debtor's Estate.**

Courts also assess the "value" provided to the debtor, its estate and creditors through the professional's efforts. Fees awarded to bankruptcy professionals should bear a reasonable relationship to "what the benefit in question really was." *In re Intellogic Trace*, 188 B.R. at 561.

When Lazard initially was retained pre-bankruptcy, in the spring of 2003, NorthWestern was in dire circumstances. Its relationship with Montana regulators was

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<sup>7</sup> The Debtor's enterprise value upon emergence from bankruptcy on November 1, 2004 was estimated to be \$1.5 billion, consisting of \$790 million of debt plus \$710 million for 35.5 million shares of new common stock issued to the creditors at an estimated value of \$20 per share. (See Tab No. 32 at 94) The Class 7 and Class 9 creditors received 91% of the new equity, with an estimated recovery at these values of 68.4%. (See *id.* at 7-12) NorthWestern stock closed at \$31.07 per share on December 30, 2005. (See Exhibit 2 hereto) At that price, the Class 7 and 9 creditors who received equity under the Plan and held onto the stock have now recovered 100% of the amount of their claims plus about 6% interest since NorthWestern emerged from bankruptcy 14 months ago.

strained (*see* Tab No. 32 at 23-24), and several significant litigations were pending. (*Id.* at 39-48) NorthWestern faced a liquidity crisis with a \$31 million interest payment on its unsecured senior indebtedness coming due in September. Lazard worked closely with the Debtor's management and the Board to consider numerous out-of-court restructuring alternatives, *i.e.*, sales of non-core assets, debt tender offers, debt exchange offers and strategies to raise new equity. As part of this process, Lazard met with the Debtor's management on a regular basis and became familiar with the Debtor's operations and business plan, regulatory environment, competitive positioning, and capital structure. In addition, Lazard prepared an initial valuation of the Debtor, as well as debt capacity analyses, to determine the target capital structure with respect to a restructuring of the utility. (Tab No. 1, at ¶ 7).

A multi-step plan was devised for NorthWestern to negotiate a \$50 million accounts receivable financing facility with GE and sell its Blue Dot and Expanets assets for around \$200 million.<sup>8</sup> NorthWestern would use the proceeds from these transactions to make tender or exchange offers for some of its debt and follow up with an exchange of new equity for debt to increase the stock trading price, which was then below \$1.00 per share. This last element required an amendment to NorthWestern's charter to authorize the shares needed for the exchanges, but the common stockholders – who would have been diluted, but at least would have retained their equity interests – rejected the proposed amendment. As a result, GE, knowing that a bankruptcy filing was possible, declined to proceed with the accounts receivable financing, the Expanets and Blue Dot

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<sup>8</sup> NorthWestern had acquired Blue Dot Services, Inc., an HVAC services company, and Expanets, Inc., an internet company, some years before the bankruptcy filing. (*See* Tab No. 32 at 20)

sales were delayed, and NorthWestern had to seek bankruptcy protection in September 2003 because it could not make the interest payment. (*Id.* at 28-30)

Yet just a year later, the Plan was confirmed, and the Debtor emerged from bankruptcy in strong financial condition with a restructured balance sheet, restored credit rating, significant liquidity, an agreement with Montana regulators, a new independent board of directors, and newly issued common stock listed on the NASDAQ. The per share value of that stock has increased from \$20 under the Plan, to \$28 when the fee application was heard below, to \$31 today. At these prices, the return to unsecured creditors has reached 100%. (*See* n. 7 above)

Lazard's contributions to the success of the Debtor's bankruptcy case included the following (*see* Tab No. 50 at 6-8):

- quickly arranging debtor-in-possession financing, thereby demonstrating the Debtor's viability and liquidity in the early days of the bankruptcy;
- negotiating a 1.75% interest rate reduction on a prepetition credit facility, by arranging a larger, lower cost DIP that would have refinanced these lenders, which saved \$6.8 million in interest per year;
- preparing valuation and debt capacity analyses that formed the basis for the Plan and resulted in NorthWestern emerging from bankruptcy with significantly less debt and improved credit ratings;
- consulting with unsecured creditors and other claim holders to develop a settlement under the Plan in a little over a year (which was a record for a utility bankruptcy and avoided the Debtor incurring further bankruptcy costs which were averaging approximately \$4 million a month);
- serving as expert witness on Plan confirmation;
- negotiating a Bankruptcy Court approved settlement with Montana regulators that avoided a confirmation contest and eliminated the risk of a post-confirmation rate case;
- assisting the Debtor with credit rating agency issues;

- evaluating listing requirements for national exchanges, *e.g.*, the NYSE and the NASDAQ;
- advising the Debtor in obtaining exit financing comprised of a \$125 million revolving credit facility and refinancing another \$400 million of debt, which saved \$5 million a year in interest, and extending maturities on other debt from 2006 to 2010;
- analyzing third party offers for the Debtor and recommending that the standalone Plan provided greater value – the right call, given NorthWestern's strong performance since emerging from bankruptcy and significant increase in share price and market value.

*See also* Opinion, 324 B.R. at 545.

In cutting the Restructuring Fee in half, Judge Peterson unfairly criticized that the Engagement Letter, approved by Judge Case, did not condition Lazard's entitlement to the full Restructuring Fee on a recovery by the Debtor's common stockholders. *See* Opinion, 324 B.R. at 545; Tab No. 58 at 25-26. As discussed above, the uncontested evidence shows that in the months preceding the bankruptcy filing, NorthWestern and Lazard devised a strategy to create value for existing equity and worked diligently to achieve that result but, in the end, were stymied by the common stockholders themselves, who rejected the required charter amendments.

It was not Lazard's fault that by the time of the bankruptcy case the Debtor had a negative net worth of \$700 million to \$800 million, as the Bankruptcy Court acknowledged, and a return to common equity was not possible.<sup>9</sup> *See* Opinion, 324 B.R.

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<sup>9</sup> While the Bankruptcy Court cited two cases in which stockholders were fortunate enough to receive a recovery, the far more common result in large public company chapter 11 cases is that equity is extinguished. A recent sampling of such cases includes: *In re: New Global Telecom, Inc.*, Case No. 01-1869 (GMS) (Bankr. D. Del., confirmed Apr. 16, 2002); *In re: EXDS, Inc. (f/k/a Exodus Communications, Inc.), et al.*, Case No. 01-10539 (SLR) (Bankr. D. Del., confirmed Jun. 5, 2002); *In re: XO Communications, Inc.*, Case No. 02-12947

Continued...



at 545 (Debtor's enterprise value was \$1.5 billion, but \$2.2 billion to \$2.3 billion in value was needed to produce return to stockholders). Lazard never would have agreed to serve as the Debtor's financial advisor if most of its compensation had been conditioned on achieving an impossible result, and it was unreasonable for the Bankruptcy Court to slash the Restructuring Fee in half on that basis.<sup>10</sup>

Most importantly, Lazard did in fact satisfy the conditions in the Engagement Letter to its right to receive the full Restructuring Fee – the effectuation of a restructuring agreed to by the required number of creditors. That compensation arrangement specifically was approved by Judge Case at the start of the case and was never found "to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions" as required by section

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(continued)

(AJG) (Bankr. S.D.N.Y., confirmed Nov. 15, 2002); *In re: SLI, Inc., et al.*, Case No. 02-12608 (MFW) (Bankr. D. Del, confirmed Jun. 19, 2003); *In re: Metromedia Fiber Network, Inc., et al.*, Case No. 02-22736 (ASH) (Bankr. S.D.N.Y., confirmed Aug. 21, 2003); *In re: GenTek, Inc., et al. and Noma Company*, Case No. 02-12986 (MFW) (Bankr. D. Del., confirmed Oct. 7, 2003); *In re: National Energy & Gas Transmission, Inc. (f/k/a PG&E National Energy Group, Inc.), et al.*, Case No. 03-30459 (PM) (Bankr. D. Md., confirmed May 3, 2004); *In re: Cable & Wireless USA, Inc., et al.*, Case No. 03-13711 (CGC) (Bankr. D. Del., confirmed Jul. 14, 2004); *In re: RCN Corp., et al.*, Case No. 04-13638 (RDD) (Bankr. S.D.N.Y., confirmed Dec. 8, 2004).

<sup>10</sup> The Bankruptcy Court also noted some ongoing litigation concerning the Plan and concluded, unfairly, that "the post-confirmation conflicts . . . were not properly resolved by Lazard during the confirmation process." Opinion, 324 B.R. at 546. Lazard was the Debtor's financial advisor, not its legal counsel, and was not responsible for or consulted about these litigation matters.

328(a).<sup>11</sup> Therefore, there was no legal basis to deny an award of the full Restructuring Fee to Lazard at the end of the case.

As discussed above, all the evidence proved that Lazard's requested compensation under the Restructuring Fee was fully earned under the express terms of the Engagement Letter approved by the Bankruptcy Court at the start of the Debtor's chapter 11 case and was in line with the market for financial advisory services in comparable restructuring and non-bankruptcy transactions as specified in section 330(a)(3). Therefore, the Bankruptcy Court clearly erred and abused its discretion in reducing Lazard's Restructuring Fee by half, its fee order should be reversed, and Lazard's full \$5.5 million Restructuring Fee should be approved.

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<sup>11</sup> The Bankruptcy Court expressly declined "to examine the improvidence issue set forth in section 328(a)." Opinion, 324 B.R. at 541.

### CONCLUSION

For all of the foregoing reasons, the Bankruptcy Court's May 5, 2005 fee order should be reversed, and this Court should approve Lazard's final fee application for an award of the full Restructuring Fee in the amount of \$5.5 million.

Dated: Wilmington, Delaware  
January 4, 2006

/s/ Anthony W. Clark  
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## LAZARD EXHIBIT 1

Response Exhibit A**Debtor Advisor Restructuring Fees**

<b>Company</b>	<b>Date Filed</b>	<b>Debtor Advisor</b>	<b>Restructuring Success Fee</b>	<b>Total Funded Debt</b>	<b>Restructuring Success Fee as % of Total Funded Debt</b>
RCN Corp	05/27/04	Blackstone Group LP	\$7.0 million	\$1,580 million	0.44%
NorthWestern Corp.	09/14/03	Lazard Frères	\$5.5 million	\$2,200 million	0.25%
Loral Space & Communications Ltd.	07/15/03	Greenhill	\$7.0 million	\$2,244 million	0.31%
Westpoint Stevens	06/01/03	Rothschild	\$8.6 million	\$1,673 million	0.51%
Acterna Corp.	05/06/03	Miller Buckfire Lewis Ying	\$2.0 million	\$2,082 million	0.09%
Leap Wireless	04/13/03	UBS Warburg	\$10.8 million	\$2,025 million	0.53%
Fleming Companies	04/01/03	Blackstone Group LP	\$8.8 million	\$2,056 million	0.43%
Spectrasite Holdings	11/15/02	Lazard Frères	\$5.4 million	\$2,435 million	0.22%
Versatel Telecom International	06/19/02	Lazard Frères	\$1.8 million	\$1,736 million	0.11%
Covanta Energy Corporation	04/01/02	Chilmark	\$5.2 million	\$1,869 million	0.28%
Telecom Company	2002	Lazard Frères, Goldman Sachs, DKW	\$9.1 million	\$1,988 million	0.46%
Steel Manufacturer	2002	Lazard Frères	\$4.8 million	\$1,893 million	0.25%
<b>Average</b>					<b>0.32%</b>
<b>Adjusted Average <sup>(9)</sup></b>					<b>0.32%</b>
<b>Median</b>					<b>0.30%</b>

(e) Excludes minimum and maximum values.

Response Exhibit B

Fee Run, Ranking Value \$1-\$2 billion  
 1 / 1 / 2 0 0 -  
 1/3/2005

Date Announced	Acquirer Name	Target Name	TEV	Target Advisor Fees	Fees/ TEV
10/20/2004	Blackstone Real Estate	Boca Resorts Inc	\$1,188.2	\$3.0	0.3%
9/13/2004	WPP Group PLC	Grey Global Group Inc	\$1,238.2	\$13.4	1.1%
8/16/2004	LifePoint Hospitals Inc	Province Healthcare Co	\$1,704.7	\$10.7	0.6%
8/2/2004	Fifth Third Bancorp, Cincinnati	First National Bankshares FL	\$1,635.4	\$12.3	0.8%
7/27/2004	Cooper Companies Inc	Ocular Sciences Inc	\$1,129.7	\$9.0	0.8%
7/13/2004	Bank of America Corp	National Processing Inc	\$1,135.9	\$6.8	0.6%
7/1/2004	Charles River Labs Int Inc	Inveresk Research Group Inc	\$1,556.7	\$12.2	0.8%
5/18/2004	Marsh & McLennan Cos Inc	Kroll Inc	\$1,886.7	\$9.5	0.5%
5/3/2004	Investor Group	Keystone Property Trust	\$1,375.6	\$5.1	0.4%
3/29/2004	Leonard Green & Partners LP	Hollywood Entertainment Corp	\$1,021.9	\$3.5	0.3%
3/22/2004	Welsh Carson Anderson & Stowe	US Oncology Inc	\$1,282.2	\$8.3	0.6%
3/15/2004	BancWest Corp, Honolulu, HI	Community First Bankshares, ND	\$1,213.4	\$6.1	0.5%

2/10/2004	ST Assembly Test Services Ltd	ChpPAC Inc	\$1,564.0	\$21.0	1.3%
2/9/2004	Boyd Gaming Corp	Coast Casinos Inc	\$1,291.1	\$5.6	0.4%
1/13/2004	Abbott Laboratories	TheraSense Inc	\$1,169.7	\$9.9	0.8%
12/21/2003	Pfizer Inc	Esperion Therapeutics Inc	\$1,239.6	\$10.0	0.8%
11/25/2003	Independence Community Bank	Staten Island Bancorp	\$1,492.5	\$7.4	0.5%
10/14/2003	EMC Corp	Documentum Inc	\$1,669.3	\$13.0	0.8%
10/6/2003	UnitedGlobalCom Inc	UGC Europe Inc	\$1,352.1	\$5.8	0.4%
9/17/2003	AXA Financial Inc	MONEY Group Inc	\$1,476.0	\$15.0	1.0%
7/14/2003	Boise Cascade Corp	OfficeMax Inc	\$1,347.8	\$12.5	0.9%
6/2/2003	PeopleSoft Inc	JD Edwards & Co	\$1,423.8	\$13.0	0.9%
5/14/2003	Pennsylvania Real Estate Inv	Crown American Realty Trust	\$1,313.6	\$4.3	0.3%
1/16/2003	Moore Corp Ltd	Wallace Computer Services Inc	\$1,265.3	\$7.4	0.6%
9/23/2002	David H Murdock	Dole Food Co Inc	\$1,919.2	\$7.4	0.4%
7/8/2002	eBay Inc	Paypal Inc	\$1,392.3	\$1.6	0.1%
5/13/2002	Sears Roebuck & Co	Lands' End Inc	\$1,928.2	\$11.3	0.6%
4/13/2002	Investor Group	Nortek Inc	\$1,508.9	\$4.0	0.3%
4/8/2002	Ameritrade Holding Corp	Datek Online Holdings Corp	\$1,360.8	\$5.0	0.4%
2/22/2002	Shareholders Limited Inc	CarMax Group	\$1,068.3	\$4.0	0.4%
2/4/2002		Intimate Brands Inc(Limited)	\$1,644.7	\$2.1	0.1%
12/18/2001	GE Industrial Systems	Interlogix Inc	\$1,012.3	\$5.3	0.5%
10/29/2001	CalWest Industrial Pty	Cabot Industrial Trust	\$1,905.5	\$6.4	0.3%
9/27/2001	Temple-Inland Inc	Gaylord Container Corp	\$1,027.9	\$9.8	1.0%

8/7/2001	Nationwide Financial Services	Provident Mutual Life	\$1,560.0	\$9.0	0.6%
7/9/2001	International Game Technology	Anchor Gaming Inc	\$1,280.2	\$6.3	0.5%
5/23/2001	Johnson & Johnson Inc	Inverness Medical- Diabetes	\$1,300.0	\$1.0	0.1%
5/23/2001	Pride International Inc	Marine Drilling Cos	\$1,995.9	\$11.0	0.6%
5/1/2001	Pulte Homes Inc	Del Webb Corp	\$1,816.9	\$1.0	0.1%
2/22/2001	Siemens Info & Commun Grp	Efficient Networks Inc	\$1,030.3	\$25.0	2.4%
2/15/2001	Westfield America Trust	Westfield America Inc	\$1,050.8	\$1.5	0.1%
2/5/2001	Patterson Energy Inc	UTI Energy Corp	\$1,463.9	\$2.0	0.1%
1/24/2001	BB&T Corp, Winston-Salem, NC	F&M	\$1,009.3	\$1.2	0.1%
1/16/2001	Forstmann Little & Co	National, Winchester, VA			
1/13/2000	FEDEX Corp	Citadel Communications Corp	\$1,945.5	\$10.0	0.5%
10/9/2000	SmithKline Beecham PLC	American Freightways Corp	\$1,237.8	\$4.5	0.4%
8/28/2000	Fosters Brewing Group Ltd	Block Drug Co	\$1,453.5	\$13.9	1.0%
8/18/2000	AIIG	Beringer Wine Estates Holdings	\$1,455.2	\$10.7	0.7%
6/26/2000	WebVan Group Inc	HSB Group Inc	\$1,430.5	\$14.3	1.0%
6/5/2000	Thomson Corp	HomeGrocer.com	\$1,589.2	\$4.0	0.3%
5/22/2000	Koninklijke Philips Electronic	Primark Corp	\$1,133.0	\$5.4	0.5%
5/12/2000	Ingersoll-Rand Co	MedQuist Inc	\$1,029.9	\$6.0	0.6%
		Hussmann International	\$1,839.6	\$8.0	0.4%



5/8/2000	QLogic Corp	Ancor Communication Inc	\$1,698.7	\$13.5	0.8%
5/1/2000	Koninklijke Numico NV	Rexall Sundown Inc	\$1,747.4	\$10.8	0.6%
4/17/2000	Sannina Corp	Hadco Corp	\$1,293.5	\$7.0	0.5%
4/5/2000	Peregrine Systems Inc	Harbinger Corp	\$1,897.7	\$11.4	0.6%
3/20/2000	National Commerce Bancorp	CCB Financial Corp, Durham, NC	\$1,961.4	\$7.4	0.4%
3/8/2000	Cyber Computer Products Corp	Apex Inc	\$1,054.2	\$3.5	0.3%
2/25/2000	NetIQ Corp	Mission Critical Software Inc	\$1,361.7	\$2.7	0.2%
2/23/2000	ADC Telecommunications Inc	PairGain Technologies Inc	\$1,422.2	\$11.5	0.8%
2/17/2000	Lennar Corp	US Home Corp	\$1,472.3	\$5.3	0.4%
2/14/2000	Healthcon/WebMD Inc	Medical Manager Corp	\$1,801.0	\$8.0	0.4%
2/14/2000	Corning Inc	NetOptix Corp	\$1,859.3	\$8.3	0.4%
2/7/2000	BB&T Corp, Winston-Salem, NC	One Valley Bancorp Inc, WV	\$1,190.5	\$6.0	0.5%
1/7/2000	McLeodUSA Inc	SplitRock Services Inc	\$1,964.1	\$10.6	0.5%
		Average	\$1,447.5	\$8.0	0.6%

## LAZARD EXHIBIT 2



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#### NorthWestern Corp. (NVEC)

12/30/05 04:00 p.m. EDT NASDAQ NM

Last	Change	% Change
<b>31.07</b>	<b>-0.05</b>	<b>-0.16%</b>

Open	High	Low
<b>30.98</b>	<b>31.15</b>	<b>30.82</b>

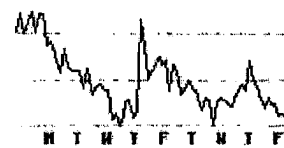
Volume	Prior Day's Volume	Prior Day's Close
<b>100,980</b>	<b>69,152</b>	<b>31.12</b>

52-Week High 52-Week Low

**32.53** (08/03/2005) **25.52** (03/23/2005)

U.S. stock prices on NYSE and AMEX are delayed 20 minutes or more, Nasdaq prices are delayed 15 m  
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date:  

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Market Cap(Mil) **1,120.08**P/E Ratio **0.00**Dividend Yield **3.95%**Latest Dividend **\$0.31**Pay Date of Latest Dividend **12/31/05**Last Stock Split **100% stock div.**Date of Last Split **05/28/97**Shares Outstanding (Mil) **35.71**

#### Latest News

**CERTIFICATE OF SERVICE**

I, Albert T. Powers III, hereby certify that on January 4, 2006, I electronically filed Appellant Lazard Frères & Co. LLC's Opening Brief on Appeal with the Clerk of the Court using CM/ECF which will send notification of such filings to the following:

**By CM/ECF and Hand Delivery**

Mark Kenney, Esq. Office of the United States Trustee 844 King Street, Room 2313 Wilmington, DE 19801	Victoria Watson Counihan, Esq. William E. Chipman, Jr., Esq. Greenberg Traurig, LLP The Brandywine Building 1000 West Street, Suite 1540 Wilmington, DE 19801
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**By CM/ECF and First-Class Mail**

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/s/ Albert T. Powers III  
Albert T. Powers III (I.D. No. 4490)